

are occupied by co-channel incumbents, geographic licensees should be responsible for meeting their coverage requirements."⁴³

PCIA agrees that geographic licensees should be required to provide coverage to one-third of the population in three years from the grant of the authorization, and to two-thirds of the population in five years. In addition, the Commission should include a third component of that requirement -- that the geographic licensee's interference contour cover at least 10 percent of the market area population at the end of one year. PCIA also urges the Commission to eliminate the exception from the population coverage standard for licensees providing "substantial service." The purpose of both these recommendations is to minimize the likelihood that entities that are not serious in their intent to construct operational facilities will not obstruct the ability of incumbent licensees in obtaining grant of a market area license. PCIA believes that its proposed modifications to the Commission's coverage standards, combined with the specification that market area licensees directly provide service to meet the coverage requirements, will reduce the occurrence of entities seeking to block competitors or otherwise engage in activity contrary to the public interest.⁴⁴

In support of its build out requirements, the Commission is proposing that "a geographic licensee's failure to meet the coverage requirements should result in automatic

⁴³ *Id.*, ¶ 43.

⁴⁴ PCIA acknowledges that the Commission proposed the "substantial service" option in order to "provide an incentive for incumbents already providing substantial coverage to seek geographic licenses in the areas they serve." *Id.*, ¶ 43. PCIA believes that the risks that this option will be manipulated by entities seeking to block the activities of incumbent competitors are much higher than the possible benefits identified by the Commission, and thus should not be retained.

cancellation of the geographic license."⁴⁵ PCIA agrees that this is the appropriate manner in which to handle failure to construct required facilities, and emphasizes that the Commission's rules should clearly state that the cancellation is *automatic*, without requiring any sort of public notice or correspondence from the Commission. Where the geographic licensee that fails to meet the coverage requirements had pre-existing facilities in the market, that licensee should be permitted to retain and have protected its operations in existence as of the time of the award of the geographic license.

Finally, in response to the Commission's proposal to dismiss all pending slow growth applications when it issues its decision in this proceeding, PCIA recommends that any licensee that sought extended implementation should be given a reasonable period of time to complete construction and retain its exclusive frequency authorization, subject to full interference rights, if those slow growth applications are dismissed. Licensees that sought extended implementation relied in good faith on Commission policies and practice in place until the adoption of the *Notice*. They accordingly should be given the opportunity to respond to revised policies. PCIA suggests that the entities requesting slow growth could be treated similarly to the entities that had requested rule waivers to come into compliance with the Commission's recent decision with respect to the use of multi-frequency transmitters.⁴⁶ Such action most effectively serves the public interest and balances the reliance of licensees

⁴⁵ *Id.*, ¶ 44.

⁴⁶ *See PCP Exclusivity Reconsideration Order*, ¶¶ 30-31.

on Commission policies with the Commission's concern that grant of such requests would hinder geographic licensing.

D. The Commission's Co-Channel Interference Protection Rules Must Effectively Guard Against Interference

As noted by the Commission, it is essential that the Commission have in place rules that will protect incumbent operations from interference from the geographic licensees and to protect adjacent market operations from interference.

1. Protection of Incumbent Systems

With respect to lower band common carrier channels, the Commission proposed to determine the interference protection to be given to incumbents based on the mathematical formulas and contour overlap provisions now reflected in the Commission's Rules.⁴⁷ PCIA supports this approach for the lower band Part 22 channels, and believes that these provisions provide appropriate co-channel protections.

Regarding 929 MHz and 931 MHz operations, the *Notice* proposes to change the current protection standards contained in Parts 22 and 90 and instead adopt an eight-radial contour method and mathematical formula for determining service and interference contours.⁴⁸ PCIA concurs with the Commission's assessment that the same standard should be employed for both the 929 MHz and 931 MHz bands. The formula set out in the *Notice*,

⁴⁷ *Notice*, ¶ 48.

⁴⁸ *Id.*, ¶¶ 50-55.

however, is not the appropriate standard to provide appropriate protection to incumbent operators. Rather, as specifically demonstrated in the comments of a number of paging licensees being filed concurrently in this proceeding, the formula dramatically understates existing protected coverage areas. As a result, if the Commission's proposed formula is adopted, interference to existing operations undoubtedly would result.⁴⁹ This interference would adversely affect the ability of the subscribers of both market area licensees and protected incumbents to obtain pages.

PCIA recommends instead that the Commission retain for 931 MHz facilities the standards reflected in Tables E-1 and E-2, contained in Section 22.537 of the Commission's Rules,⁵⁰ and extend those standards to 929 MHz as well. The experience of the industry is that those standards generally provide appropriate levels of interference protection, and thus should be effective in ensuring that incumbent operations are fully protected.

2. Maximum Power and Height-Power Limits

PCIA supports the Commission's proposal to increase the maximum power for 929 MHz non-nationwide facilities from 1000 Watts to 3500 Watts.⁵¹ PCIA also concurs with the Commission's recommendation to eliminate the height-power limit for 929 MHz

⁴⁹ In addition, paging licensees might find it necessary to undertake a massive system redesign to accommodate their existing operations to the new interference standard.

⁵⁰ 47 C.F.R. § 22.537.

⁵¹ See Notice, ¶ 57.

licensees.⁵² As noted by the Commission, such action will promote technical parity between the 929 MHz and 931 MHz services, as well as with narrowband PCS facilities. PCIA previously has urged the Commission to conform as much as possible the 929 MHz and 931 MHz power and height-power limitations in order to place licensees in these bands on comparable footing.⁵³

3. Adjacent Geographic Licensees

In connection with the protection of adjacent market licensee, PCIA generally supports the Commission's proposal that "geographic licensees should provide interference protection either by (1) reducing the signal level at their service area boundary (*e.g.*, by positioning directional antennas in such a way that the contour does not encroach on a geographic licensee's adjacent territory), or (2) negotiating some other mutually acceptable agreement with all potentially affected geographic licensees in adjacent areas."⁵⁴ Because this approach is consistent with the Part 24 narrowband PCS rules, implementation of the Commission's proposal in this proceeding will promote regulatory parity. In addition, handling adjacent market interference protection with this type of standard affords licensees the maximum flexibility to accomplish efficient system design.

⁵² See *id.*, ¶ 60.

⁵³ See, *e.g.*, Comments of the Personal Communications Industry Association, GN Docket No. 93-252, at 12 (filed June 20, 1994) ("*PCIA Regulatory Parity Comments*").

⁵⁴ *Id.*, ¶ 62.

At the same time, it is necessary to accommodate the proposed Commission standards for adjacent licensee interference protection with the proposed standards for the protection of incumbent operations. PCIA commits to working with the Commission to develop appropriate formulas, so as to ensure that the combination of the two standards does not result in any unacceptable interference or in anomalies in protected coverage areas.

E. The Commission Should Not Impose Any Channel Aggregation Limit on Paging Frequencies

The Commission requests commenters to address the issue whether an aggregation limit is appropriate for paging frequencies.⁵⁵ PCIA does not believe it is appropriate for the Commission to adopt any paging channel aggregation limitation. As the *Notice* points out, "significant aggregation of paging channels has not occurred."⁵⁶ There is no record that suggests that excessive aggregation of narrowband licenses is either a real or potential problem, and thus no need for the Commission to take any remedial or preventative action. Indeed, PCIA has previously observed that limits on spectrum aggregation are likely to create barriers to entry and impede a competitive marketplace.⁵⁷

⁵⁵ *Id.*, ¶ 69.

⁵⁶ *Id.*

⁵⁷ *PCIA Regulatory Parity Comments* at 8-9.

**V. THE COMMISSION SHOULD ADOPT A MORE APPROPRIATE
TRANSITION PLAN THAT MINIMIZES DISRUPTION TO EXISTING
SERVICE ARRANGEMENTS**

PCIA is concerned that the transition from the current licensing structure to the issuance of market area authorizations has the potential to impede the ability of existing service operators to meet customer needs, and has voiced this concern in informal meetings with the Commission staff. Depending upon the structure of the transition, there may be opportunities for entities to engage in "greenmail" of existing licensees or to seek to block the expansion opportunities of existing carriers already providing service to the public. PCIA accordingly urges the Commission to adopt a more gradual transition to market area licensing that recognizes those licensees that already are providing coverage in MTAs at a level in excess of that required for the five-year build-out benchmark.

Specifically, under PCIA's proposal, as previously discussed with the staff on an informal basis, the only entities eligible for the initial round of applications for market area licenses would be existing licensees desiring to obtain a market area license and that can certify that they cover at least 70 percent of the population of a particular license area. This exceeds the level of build out required of geographic licensees at the five year date under the Commission's proposal. Existing licensees meeting this criteria would be granted a geographic license for the particular MTA, and that market on that frequency would be removed from the pool of licenses available for auction.

The Commission would then open a subsequent window for the filing of applications for those markets where authorizations are not granted in the first round, where other entities

(both existing carriers operating within the market as well as newcomers) would be eligible to participate. Action on these applications would be taken pursuant to the competitive bidding rules and policies adopted by the Commission in this proceeding.

Adoption of PCIA's approach would have a number of public interest benefits. First, disruptions to existing services relied upon by subscribers would be minimized. Second, this proposal would reduce the opportunities for "greenmail" and anticompetitive activities by speculators and other unscrupulous participants in the paging industry. Third, legitimate opportunities for competitive bidding to occur will be preserved. PCIA thus believes that its proposed transition plan would most effectively serve the public interest in converting current transmitter-by-transmitter licenses to geographic authorizations.

VI. THE COMPETITIVE BIDDING DESIGN MUST TAKE INTO ACCOUNT THE NUMBER OF EXISTING OPERATIONS IN THE PAGING FREQUENCIES AND THE NUMBER OF CHANNELS THAT POTENTIALLY COULD BE INVOLVED IN AUCTIONS

Recognizing that the Commission may not adopt PCIA's proposed transition plan and also because auction rules will still be necessary, PCIA addresses the Commission's proposals for the adoption of competitive bidding rules and policies. For the most part, PCIA supports imposition of the competitive bidding rules that have been generally applied in the context of a number of other services. Areas where PCIA may have differences from that view as well as matters of particular importance to the paging industry are discussed below.

A. Application/Upfront Payment Requirements Should Be Established To Permit Participation by Entities With Legitimate Paging Business Plans and To Discourage Speculators and Others Seeking To Obstruct Competitive Paging Operations

PCIA recommends that any entity seeking to participate in the paging service auction be required, in its application, to identify each and every frequency in each specific market for which it seeks an authorization. Otherwise, applicants may submit blanket bids for frequencies and service areas where they have no intention of bidding, but nonetheless create mutually exclusive situations triggering the application of competitive bidding procedures for the award of the authorization. This would force the only serious applicant to submit a minimum bid for the authorization and unnecessarily delay the award of the market area license needed to permit such applicant to expand or initiate operations within the service area. This requirement also would mean that applicants must demonstrate some level of sincerity and understanding regarding the proposed market *and* frequency.

Consistent with ensuring that all applicants are seeking to participate in the auctions for legitimate purposes, the Commission should require that upfront payment amounts be calculated on a per market/per frequency basis. Thus, an upfront payment would be associated with each authorization sought by an entity. This may help to ensure that only qualified entities participate in the auctions and that such applicants are not using the Commission processes instead to gain payoffs from those entities currently operating in the market or otherwise seriously interested in providing service to the public.

The amount of the upfront payment per frequency per market must be carefully established. This amount needs to be set at a level that ensures that all applicants

participating in an auction are fully serious about the construction and operation of facilities and not merely participating in order to harm a competitor or for payoff purposes. At the same time, the level cannot be so high as to prevent any smaller paging operators from participating in auctions for market area authorizations where the operator has facilities in place. Striking this balance will be difficult.

In addition, again to ensure that parties filing applications to participate in the auctions have some concrete financial stake, the Commission should require that those entities that do not already cover 10 percent of the population in the MTA with pre-existing paging facilities be required to post a performance bond. When the Commission authorized the filing of slow growth extension requests in connection with its 929 MHz exclusivity policies, it imposed a performance bond requirement to help assure that facilities would be constructed.⁵⁸ A performance bond requirement would serve a similar purpose in this context; an auction winner subject to this requirement and that failed to construct would be required to forfeit the performance bond amount to the U.S. Treasury. As a result, requiring a performance bond would help to ensure that the auction applicant has a serious intent about its participation.

Adoption of PCIA's proposals would strike the appropriate balance between encouraging participation in the auctions by qualified entities with serious business plans to provide paging services and minimizing filings by applicants with other, inappropriate motives behind their auction applications. This, in turn, would benefit the users of paging services and better promote the competitive paging marketplace.

⁵⁸ *PCP Exclusivity Order*, 8 FCC Rcd at 8326-27.

B. The Commission Should Employ a Non-Simultaneous Closing Rule When It Conducts Simultaneous Auctions

In order to move along the conduct of the auction, to resolve those auctions as early as possible when that can be done, and to minimize opportunities for entities to manipulate the auction processes, PCIA urges the Commission to employ a non-simultaneous closing rule. Specifically, the Commission would close the auction for a particular frequency in a particular market at the conclusion of the round after the round in which no new bids are submitted. This will enhance the functioning of the auctions, and should permit the Commission to conclude the overall auction on a timely basis.

C. The Commission Should Conduct Simultaneous Electronic Bidding for All Markets and All Frequencies in Each of the Bands

In establishing its auction procedures, PCIA believes that the Commission should consolidate the auctions into two groups -- one for the 929 MHz and 931 MHz markets, and one for the lower band common carrier frequencies. Because these auctions could involve a large number of simultaneous auctions in which carriers have many interests,⁵⁹ the Commission should ensure that it provides adequate time between the rounds to permit review of the bids, verification of bid accuracy, and decision-making about bidding strategy. PCIA thus recommends that, for at least the first five rounds, the Commission should hold no more than one round every other day. PCIA believes that it is quite likely that, after the

⁵⁹ In the 929 MHz and 931 MHz bands, the auction would involve nearly 4,000 separate market/frequency authorizations.

first five rounds, a number of market/frequency combinations will have closed, and auction participants will be able to respond more quickly to those market/frequency combinations where bidding action is still ongoing. Thus, if deemed appropriate by the Commission, the intervals between rounds could be reduced.⁶⁰

D. Designated Entities Already Have Opportunities To Participate in the Paging Marketplace, and Thus No Additional Benefits in the Competitive Bidding Process Are Required

The Commission's statements about the competitive nature of the paging industry have recognized the lack of barriers to entry. This marketplace thus is more accessible to entities with limited resources, such as designated entities, than those services requiring much more substantial investment to participate. As a result of this circumstance, as well as the diversity of current participants in the industry, no special treatment is required for the Commission to comply with congressional mandates to promote opportunities for participation by designated entities.⁶¹

Initially, PCIA concurs in the Commission's tentative conclusion that "it is not necessary to adopt an entrepreneurs' block for paging."⁶² Such a plan simply is not feasible with the level of encumbered spectrum that exists in the paging frequencies. In addition,

⁶⁰ PCIA urges the Commission to exercise its discretion to maintain longer intervals between rounds should the number of market/frequency closings not be as high as PCIA currently expects. This is consistent with the Commission's authority under the auction rules to adjust the length of rounds as deemed appropriate.

⁶¹ See Notice, ¶ 114; 47 U.S.C. § 309(j)(3)(B).

⁶² Notice, ¶ 124.

setting aside certain frequencies for exclusive licensing to designated entities would foreclose existing operators on those frequencies from seeking market area licenses in those areas where they already provide substantial service (unless such current operators pursue an authorization on a different frequency, which in all likelihood would require substantial system modification and investment). Finally, on most frequencies, designated entities without any pre-existing operations in a market would find it impossible to meet the Commission's proposed coverage requirements directly without buying out existing operators -- thus adding substantially to the cost of system construction.

PCIA also opposes the Commission's proposal to grant bidding credits to certain categories of designated entities.⁶³ While bidding credits do not appear to be necessary to advance Commission goals, they can be used to distort seriously, and thus undermine, the competitive bidding process, especially if the entity granted the bidding credits in a particular auction is a competitor of another bidder in the auction. This problem obviously is greater in already encumbered spectrum, as is the case in the paging frequencies.

In addition, the Commission's experience with bidding credits in the narrowband PCS auctions suggests that the credits do not serve the intended purpose. The regional narrowband PCS auctions resulted in the entities eligible for bidding credits paying as much or more as those entities who did not have access to such credits. Accordingly, the Commission should not adopt a plan for awarding bidding credits in the Part 22 and Part 90 auctions.

⁶³ *Id.*, ¶¶ 119, 125-31.

E. Auction Winners Should Be Permitted To Proceed With Construction, at Their Own Risk, Immediately at the Conclusion of the Auction

The Commission should adopt rules to permit the winner of an auction to begin to construct facilities immediately upon conclusion of the auction, to the extent such construction can be achieved while protecting incumbent licensees.⁶⁴ Such construction would be at the auction winner's own risk, dependent upon the outcome of the Commission's review of the associated Form 600 and any petitions to deny. This would permit auction winners to proceed with service improvements pending the resolution of any petitions to deny, which experience to date has shown may well be frivolous and unrelated to the qualifications of the auction winner. Otherwise, system modifications needed to respond to consumer demands -- and necessarily deferred as the result of the application freeze -- will be delayed for an even longer period of time until the Commission can conclude action on the full term market area authorization.

⁶⁴ PCIA has previously urged the Commission to grant increased flexibility to applicants to construct facilities in advance of a license grant. *See, e.g.*, Comments of Telocator, CC Docket No. 92-115, at 24-25 (filed Oct. 5, 1992); *PCIA Regulatory Parity Comments* at 34.

VII. CONCLUSION

PCIA urges the Commission to adopt final rules in this proceeding as quickly as possible and promptly to conduct the necessary auctions in order to allow paging licensees to get on with meeting the service needs of the public. In doing so, the Commission should adopt market area licensing only for the 929 MHz exclusive frequencies, 931 MHz, and common carrier lower channel bands, and expressly sever out all of the Part 90 shared frequencies. Moreover, market value licensing and competitive bidding procedures must be carefully deployed to protect the legitimate service expectations of subscribers and thus the public interest.

Respectfully submitted,

**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

By: <u>Katherine M. Holden</u>	By: <u>Mark J. Golden</u> /KJH
Katherine M. Holden	Mark J. Golden
WILEY, REIN & FIELDING	Vice President of Industry Affairs
1776 K Street, N.W.	PERSONAL COMMUNICATIONS
Washington, D.C. 20006	INDUSTRY ASSOCIATION
(202) 429-7000	500 Montgomery Street
	Suite 700
	Alexandria, VA 22314
	(703) 739-0300

March 18, 1996